



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 5263-99

22 October 1999

CAPT [REDACTED] USMC

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 October 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 12 August 1999, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 2 September 1999, copies of which are attached. They also considered your rebuttal letters dated 30 September and 21 October 1999.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB in finding that your contested fitness report should not be removed or modified. They could find no unfairness in your reviewing officer's (RO's) comments. In this regard, they did not accept your contention that the comment "Strives for advanced flight leadership designations" somehow suggests that you were not "putting forth the effort into [your] flying skills." They were unable to find that your RO's comments were based on his disagreement with a legal opinion you provided, or that they were intended to hurt your chances for promotion. Finally, they were likewise unable to find that either your reporting senior or RO "manipulated the system" against you. Since the Board found no defect in your performance record, they had no basis to strike your failure by the Fiscal Year 2000 Major Selection Board. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosures

5263-99



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

1610 REPLY REFER TO:

MMER/PERB

12 AUG 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
CAPTAIN [REDACTED] USMC

Ref: (a) Captain [REDACTED]'s DD Form 149 of 18 May 99  
(b) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 29 July 1999 to consider Captain [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 980429 to 980621 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends there are inconsistencies between marks in Section B and comments in Section C; that a comment within Section C incorrectly references performance already commented on in a previous reporting period; and that there is a "gross inconsistency" between the comments made by the Reporting Senior and those authored by the Reviewing Officer. To support his appeal, the petitioner furnishes copies of other fitness reports, a copy of his Section Leader designation letter, and extracts from his Flight Log Book.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Contrary to the petitioner's argument, the Board discerns absolutely no inconsistency between any of the assigned ratings in Section B and the narrative comments in Section C. The report is a totally "outstanding" evaluation and the comments are all quite laudatory and positive. That the petitioner believes otherwise is viewed as a product of his interpretation.

b. Lieutenant Colonel [REDACTED] did not err in mentioning that the petitioner attained Section Leader designation (although it occurred in the prior period). He was not the Reporting Senior on that prior evaluation and there was no way he would have known the Reporting Senior for that period had reported the designation. Lacking anything to the contrary, it is presumed that Lieutenant Colonel [REDACTED] was ensuring that the

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
CAPTAIN [REDACTED] USMC

petitioner's continuing aeronautical progress was noted and recorded. If Reporting Senior err did occur, it was in favor of the petitioner.

c. Although the reporting period was less than 90 days, an observed report was well within the spirit and intent of reference (b) (paragraph 3006). The situation was "daily" observation in an operational squadron, and ostensibly a high tempo of operations.

d. The Reviewing Officer had no obligation to mirror the Reporting Senior's evaluative comments -- he had his own perspective. Lieutenant Colonel [REDACTED] rendered an overall concurrence, but did render some qualifying comments of his own. Those comments are considered neither inconsistent nor inaccurate.

4. The Board's opinion, based on deliberation and secret ballot vote is that the contested fitness report should remain a part of Captain [REDACTED]'s official military record.

5. The case is forwarded for final action.

[REDACTED]  
Colonel, U.S. Marine Corps  
Deputy Director  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

5263-99

IN REPLY REFER TO:

1600  
MMAA-4  
2 Sep 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR PETITION FOR CAPTAIN [REDACTED]  
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of  
Capt [REDACTED] USMC  
[REDACTED]

1. Recommend disapproval of Captain [REDACTED] request for removal of his failure of selection.
2. Per the reference, we reviewed Captain [REDACTED] record and his petition. He failed selection on the FY00 USMC Major Selection Board. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for removal of the fitness report of 980429 to 980621. He believes that the presence of the report prevented his record from receiving a substantially complete and fair evaluation by the Board. Captain [REDACTED] requests removal of his failure of selection.
3. In our opinion, the petitioned report does present some competitive concern to the record. Additionally, Captain [REDACTED] record contains other areas of serious competitive concern that more than likely contributed to his failure of selection.
  - a. **Section B marks.** Captain [REDACTED] record contains less competitive markings in Regular Duties, Administrative Duties, Attention to Duty, Force, Leadership, and Economy of Management.
  - b. **Value and Distribution.** Captain [REDACTED] overall Value and Distribution, 20 officers ranked above him and 17 below, appears less competitive than his peers.
  - c. **Section C Comments.** Captain [REDACTED] Section C's are replete with growing comments well into his senior captain reports such as: "continues to develop," and "aviation skills continue to improve."

Subj: BCNR PETITION FOR CAPTAIN [REDACTED]  
[REDACTED] 6 USMC

4. In summary, the petitioned report does present some competitive concern to the record. Additionally, Captain [REDACTED] record contains other areas of serious competitive concern that more than likely contributed to his failure of selection. Therefore, we recommend disapproval of Captain [REDACTED] request for removal of his failure of selection.

5. Point of contact is Lieutenant Colonel [REDACTED]  
[REDACTED]

[REDACTED]  
Lieutenant Colonel,  
U. S. Marine Corps  
Head, Officer Career Counseling and  
Evaluation Section  
Officer Assignment Branch  
Personnel Management Division